

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
LOVING REST, LLC	NO. 2007-AQ-05

TO: James T. Johnson, Registered Agent  
9912 G24 HWY  
Indianola, Iowa 50125

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Loving Rest, LLC (Loving Rest) for the purpose of resolving the air quality violations which occurred at Loving Rest's facility in Indianola, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bill Gross, Field Office #5  
Iowa Department of Natural Resources  
401 SW 7th Street, Suite 1  
Des Moines IA 50309  
Phone: 712/260-1728

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

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**III. STATEMENT OF FACTS**

1. Loving Rest operates a facility that consists of a building containing two operational animal incinerators surrounded by a pet cemetery.
2. A May 31, 2001, Notice of Violation letter (NOV) was issued by DNR to Loving Rest for failure to maintain records as required by condition 13 of Air Quality Construction Permit No. 97-A-797, issued on September 30, 1997, for animal incinerator (EU4). The NOV further noted that Loving Rest had failed to timely notify DNR of the start of construction of two additional animal incinerators.
3. On August 20, 2001, Air Quality Construction Permit Nos. 01-A-987 and 01-A-988 were issued for the two unpermitted animal incinerators, EP1 and EP2 respectively. Conditions 7 and 8 of Permit No. 01-A-988 require that Loving Rest report an incident of excess emissions within 8 hours of occurrence. Condition 10 of Permit No. 01-A-988 requires that Loving Rest maintain an opacity limit of less than 40%.
4. On January 24, 2005, a DNR Field Office 5 (FO5) inspector observed black smoke emanating from EP 2 at nearly 100% opacity for at least 5 minutes. A February 1, 2005 NOV was issued by DNR to Loving Rest for excess opacity and failure to report excess emissions in violation of Air Quality Construction Permit No. 01-A-988. Excess opacity also is a violation of 567 IAC 23.4(12) and 23.3(3), and failure to report excess emissions also is a violation of 567 IAC 24.1. .
5. On February 24, 2005, a FO5 inspector observed black smoke emanating from EP 2 at nearly 100% opacity for at least 5 minutes. A February 25, 2005, NOV was issued by DNR to Loving Rest for excess opacity in violation of Air Quality Construction Permit No. 01-A-988 and 567 IAC 23.4(12) and 23.3(3), and for failure to report excess emissions in violation of Air Quality Construction Permit No. 01-A-988 and 567 IAC 24.1.
6. On June 30, 2006, a FO5 inspector conducted a formal six-minute opacity observation at Loving Rest. The opacity observation revealed an average opacity of 43.3%. A July 24, 2006, NOV was issued by DNR to Loving Rest for excess opacity in violation of Air Quality Construction Permit No. 01-A-988 and 567 IAC 23.4(12) and 23.3(3).

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 Iowa Administrative Code (IAC) chapters 20-30 relating to air quality.
2. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 22.3(3) provides that a construction permit may be issued subject to conditions that may be specified in the permit. Such conditions may include, but are not limited to, emission limits, operating conditions,

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fuel specifications, compliance testing, continuous monitoring, and excess emission reporting. Conditions 7 and 8 of Permit No. 01-A-988 require that Loving Rest report an incident of excess emissions within 8 hours of occurrence. Condition 10 of Permit No. 01-A-988 requires that Loving Rest maintain an opacity limit of less than 40%. On January 24, 2005, and February 24, 2005, Loving Rest produced emissions at almost 100% opacity. In both cases, Loving Rest failed to notify DNR within eight hours, as required. The above-stated facts show noncompliance with these provisions.

3. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 23.4(12) and 23.3(2) require that emissions from incinerator units must not exceed 40% opacity except for three aggregate minutes of 60% opacity per hour. On January 24, 2005; February 24, 2005; and June 30, 2006, Loving Rest produced emissions exceeding 40% for a period of at least five minutes. The above-stated facts show noncompliance with these provisions.

4. Pursuant to Iowa Code sections 455B.133 and 455B.134, 567 IAC 24.1 requires timely oral and written reporting of excess emissions. Following excess emissions incidents on January 24, 2005 and February 24, 2005, Loving Rest failed to timely report.

**V. ORDER**

THEREFORE, it is hereby ordered and Loving Rest agrees to do the following:

1. Operate equipment in a manner that minimizes emissions, as required by 567 IAC 24.2;
2. Comply with opacity limits, and report all incidents of excess emission to DNR within eight hours of occurrence or by the beginning of the next working day and according to the provisions of 567 IAC 24.1;
3. Beginning within 15 days of the date this order is signed by the Director, observe visible emissions daily during operation of each incinerator and record the results of the daily observations, using any amount over 0% as the indication to either make operational adjustments or to obtain the services of a certified smoke reader who shall use 40% opacity as the action level for operational adjustment and excess emission reporting; and
4. Pay a penalty of \$5,000.00 within 60 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$5,000.00 is assessed effective 30 days from the date this order is signed by the Director. The penalty shall be paid within 60 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

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Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Loving Rest has achieved a financial benefit, saving time and labor, by failing to properly operate incinerators and to have someone on-site during incinerator operation to make necessary adjustments. Based on the above considerations, \$500.00 is assessed for this factor.

Gravity of the Violation – Failure to properly operate a permitted source means that DNR is unable to accurately determine if Loving Rest's actions have caused environmental damage. Failure to report excess emissions along with violations such as these threaten the integrity of the regulatory program. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – Loving Rest has been informed of the need to comply with permit and regulatory requirements. Loving rest has been informed repeatedly of the need to operate equipment in a manner to minimize emissions, to comply with opacity limitations, and to report excess emissions incidents. Based on the above considerations, \$3,500.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS


This administrative consent order is entered into knowingly and with the consent of Loving Rest. For that reason, Loving Rest waives its rights to appeal this order or any part thereof.

## VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this

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administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

  
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JEFFREY R. VONK, DIRECTOR  
Iowa Department of Natural Resources

*Richard Leopold*

Dated this 5 day of  
Feb., 2007.

  
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for Loving Rest, LLC

Dated this 17 day of  
January, 2007.

91-01-023; Anne Preziosi; Bill Gross; EPA; VII.A.2